

## **REMARKS**

Reconsideration and withdrawal of the rejections set forth in the Office Action dated September 15, 2006 are respectfully requested.

### **I. Double-Patenting Rejections**

Claims 1-18 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1-47 of U.S. Patent No. 6,849,270.

Claims 1-18 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1-33 of U.S. Patent No. 6,342,244.

Claims 14-19 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1-33 of U.S. Patent No. 6,605,299.

A Terminal Disclaimer prepared in accordance with 37 C.F.R. §1.321(b) and (c) is enclosed. The signed Terminal Disclaimer obviates the obviousness-type double patenting rejections based on the U.S. Patent Nos. 6,849,270; 6,342,244; and 6,605,299.

Claims 1 and 3 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1 and 2 U.S. Patent No. 6,365,179. Applicants respectfully traverse this rejection.

#### **A. Analysis**

In determining whether a non-statutory basis exists for a double patenting rejection, the first question to be asked is - does any claim in the application define merely an invention that is merely an obvious of an invention claimed in the patent?. M.P.E.P. 804 II.B.1.

Instant claims 1 and 3 are to a conjugate of the general structure "polymer-linkage - ligand derived from an amine-, hydroxy- or carboxyl-containing compound".

Claim 1 of the '179 patent is directed to a conjugate of the general structure "hydrophobic moiety - linkage - drug".

Thus, in the instant claims, the linkage serves to link a hydrophilic polymer and a ligand, whereas in the claims of the '179 patent, the linkage serves to link a hydrophobic moiety to a ligand.

One skilled in the art would not reasonably find a hydrophilic polymer to be an obvious variant of a hydrophobic moiety suitable for incorporation into a lipid bilayer. Accordingly, withdrawal of the obviousness-type double patenting rejection over the '179 patent is respectfully requested.

## II. Conclusion

In view of the above remarks, the applicants submit that the claims now pending are in condition for allowance. A Notice of Allowance is, therefore, respectfully requested.

If in the opinion of the Examiner a telephone conference would expedite the prosecution of the subject application, the Examiner is encouraged to call the undersigned at (650) 838-4402.

Respectfully submitted,  
Perkins Coie LLP

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Judy M. Mohr  
Judy M. Mohr  
Registration No. 38,563

Correspondence Address:  
Customer No. 22918